

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

RALPH R. NELSON,	:	Case No. 04 CV-10845 NMG
	:	
Plaintiff,	:	JUDGE NATHANIEL M. GORTON
	:	
vs.	:	
	:	
TONYA MARIE COFFEY	:	
(NELSON), <i>et al.</i>,	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS TOM HAYES' AND CHINA WIDENER'S MOTION TO STRIKE
"PLAINTIFF'S ANSWERS TO MOTION TO DISMISS FILED FOR
DEFENDANTS TOM HAYES AND CHINA WIDENER"**

Defendants Tom Hayes and China Widener, employees of Ohio Department of Job and Family Services ("ODJFS"), hereby move this Court to strike Plaintiff's October 13, 2004 Answer to their Motion to Dismiss because Plaintiff has already filed an Answer to their Motion to Dismiss, and also because it is untimely. A Memorandum in Support is attached.

Respectfully submitted,
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MEMORANDUM IN SUPPORT

Defendants Tom Hayes and China Widener (“ODJFS Defendants”) move this Court to strike “Plaintiff’s Answers to Motion to Dismiss Filed for Defendants Tom Hayes and China Widener” filed on October 13, 2004 because he has already filed an Answer to their Motion to Dismiss, and because it is untimely. On July 22, 2004, Plaintiff filed a document entitled “DO NOT DISMISS DEFENDANTS CHINA WIDENER AND TOM HAYES.” See Docket, Doc. No. 16. Although untimely,¹ ODJFS Defendants do not oppose Plaintiff’s July 22, 2004 filing (“First Answer”). Instead, ODJFS Defendants ask this Court to strike Plaintiff’s October 13, 2004 filing (“Second Answer”) from the record.

This Court should grant ODJFS’ Defendants’ Motion to Strike because Plaintiff is not permitted to file more than one answer, without leave of this Court, to their Motion to Dismiss. Although the docket refers to Plaintiff’s First Answer as a “Letter/request (non-motion),” the substance of Plaintiff’s First Answer responds to ODJFS Defendants’ request for this Court to dismiss them from this case. Moreover, Plaintiff specifically refers to Defendants Tom Hayes and China Widener in the First Answer to their Motion to Dismiss. Plaintiff served ODJFS Defendants and their legal counsel with a copy of the First Answer. As no leave to file has been specifically granted to Plaintiff by this Court, ODJFS Defendants respectfully request that this Court strike Plaintiff’s Second Answer (October 13, 2004 filing) from the record because Plaintiff has already responded to ODJFS Defendants’ Motion to Dismiss.

¹ Plaintiff filed this document, his First Answer to ODJFS Defendants’ Motion to Dismiss, on July 22, 2004, over forty (40) days after the ODJFS Defendants filed their Motion to Dismiss. ODJFS Defendants do not challenge the filing of Plaintiff’s First Answer, but rather only move to strike Plaintiff’s Second Answer, filed on October 13, 2004.

ODJFS Defendants' Motion to Strike should also be granted due to the time frame set forth in LR 7.1(b)(2). That rule provides that a "party opposing a motion, shall file an opposition to the motion within fourteen (14) days after service of the motion." LR 7.1(b)(2). The ODJFS Defendants filed their Motion to Dismiss on June 9, 2004, within the filing deadline provided by the Court in the Court's summons. Thus, Plaintiff's opposition to ODJFS Defendants' Motion to Dismiss was due fourteen days after Plaintiff's receipt of their Motion to Dismiss. As stated earlier, ODJFS Defendants do not oppose Plaintiff's First Answer, although untimely, but they do oppose Plaintiff's filing of a *second* response well over three (3) months after the due date. Therefore, this Court should strike "Plaintiff's Answers to Motion to Dismiss Filed for Defendants Tom Hayes and China Widener" (filed October 13, 2004) both as second attempt to oppose the ODJFS Defendants' Motion to Dismiss and as untimely.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2004, a copy of the foregoing Motion to Strike was filed electronically. Notice of this filing will be sent to all parties through the Court's electronic filing system, if registered. In order to ensure that all parties are properly served, I also certify that I have served the foregoing Certification under Local Rule 7.1 via regular U.S. mail on this day, October 25, 2004, to the following:

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